Supreme Court, U.S.
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ALEXANDER L. STEVAS
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No. 84-127

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

RICHARDSON-MERRELL INC.,
Petitioner,

v.

ANNE ELISABETH KOLLER an infant, by and through JOHN LAMONT KOLLER and CYNTHIA ANNE KOLLER, her natural guardians, JOHN LAMONT KOLLER and CYNTHIA ANNE KOLLER, individually, JAMES G. BUTLER, NICHOLAS R. ALLIS, and the law firm of BUTLER, JEFFERSON, DAN & ALLIS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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RESPONDENTS' SUPPLEMENTAL BRIEF IN RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF

JACOB A. STEIN
ROBERT MUSE
STEIN, MITCHELL & MEZINES
1800 M St., N.W.
Washington, D.C. 20036
(202) 737-7777

ROBERT M. WEINBERG *
MICHAEL H. GOTTESMAN
PETER O. SHINEVAR
BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 833-9340

* Counsel of Record

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RESPONDENTS' SUPPLEMENTAL BRIEF IN RESPONSE TO PETITIONER'S SUPPLEMENTAL BRIEF

On October 6, 1984, petitioner filed a Supplemental Brief in support of its petition for a writ of certiorari, contending that the Fifth Circuit's decision in *Gibbs v. Paluk*, No. 84-1033 (C.A. 5, Sept. 10, 1984), creates a conflict among the Circuits on the fourth question presented in its petition—whether an order disqualifying counsel in a civil case is subject to interlocutory appeal. Because petitioner overstates the effect of the Fifth Cir-

cuit's decision, respondents submit this Supplemental Brief.

In asserting that "there is now a clear conflict among Circuits on the appealability of attorney disqualification orders in civil cases," Pet. Supp. Br. at 3, petitioner fails to note that the September 10 decision in *Gibbs v. Paluk* was *not* the final decision of the Fifth Circuit. Rather, the opinion cited by petitioner was issued by a motions panel, without the benefit of oral argument, on a motion to stay further proceedings in the District Court pending appeal. That the Court's opinion was limited to this interlocutory aspect of the case is established by the Court's holding: "The request for a stay is DENIED." Pet. Supp. Br. App. 10a.

On October 5, 1984, the Clerk of the Fifth Circuit advised us that *Gibbs v. Paluk* is still pending before that Court, and that the parties have filed a Motion for Clarification and a Motion to Dismiss Appeal following the motions panel's decision. Under the Fifth Circuit's rules and internal operating procedures, it is not clear whether the same panel that denied the request for a stay will also rule on the pending motions and the merits of the appeal. In addition, counsel for the appellant in *Gibbs v. Paluk* has advised us that, should the Fifth Circuit ultimately dismiss his appeal for the reasons stated by Judge Rubin in denying the request for a stay, he may seek rehearing and suggest rehearing en banc.

Thus, the September 10 decision in *Gibbs v. Paluk* does not necessarily represent the final decision of the Fifth Circuit on the immediate appealability of attorney disqualification orders in civil cases. Cf. *University of Texas v. Camenisch*, 451 U.S. 390 (1981). To the extent that that decision creates a conflict with the decision of the Court below—a conflict limited only to the fourth question presented in the petition—the conflict may well prove temporary.

Certainly, the asserted conflict does not in any way justify plenary review of petitioner's first three questions presented. And, because the conflict on the fourth question presented may resolve itself without this Court's intervention, it does not merit this Court's plenary consideration at this time.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in respondents' Brief in Opposition, the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

JACOB A. STEIN
ROBERT MUSE
STEIN, MITCHELL & MEZINES
1800 M St., N.W.
Washington, D.C. 20036
(202) 737-7777

ROBERT M. WEINBERG *
MICHAEL H. GOTTESMAN
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BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 833-9340

* Counsel of Record